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SUBJECT: Eighteenth Session of the WIPO Standing Committee on
Copyright and Related Rights

¶1. SUMMARY: Member States at the 18th session of the WIPO Standing Committee on Copyright and Related Rights (SCCR) agreed to continue without delay their work on facilitating the access of the blind, visually impaired persons (VIP) and other reading-disabled persons to copyright-protected works. Though certain non-governmental organizations (NGOs) that do not specifically represent the blind community sought to mischaracterize the U.S. position as not supportive of the access issues for the blind through Internet press reports, the U.S. demonstrated its leadership in this area at the 18th session by delivering, on day two of the session, a detailed account of its national experience, including U.S. Copyright Law exceptions and limitations and recent, comprehensive stakeholder consultations. On day 4 of the session, Brazil, Ecuador and Paraguay tabled a draft treaty (internationally binding) that would mandate a specific copyright exception for VIPs for all member states and would, among other things, authorize the cross border movement of copyright works by users without permission from the rights holder. Broader questions of limitations and exceptions to copyright law as they relate to libraries, archives and educational activities were also highlighted during discussions at the session and will be included in an upcoming limitations and exceptions questionnaire. The SCCR also agreed to continue discussing a treaty on the protection of broadcasted signals, and the protection of audiovisual performances. END SUMMARY.

¶2. The 18th session of the SCCR was held March 25 - 29, 2009 in Geneva, Switzerland. The meeting was chaired by Jukka Liedes (Finland). Several non-governmental organizations from industry groups and civil society attended and delivered interventions at the meeting.

¶3. The United States delegation was represented by Michael Shapiro and Neil Graham of the United States Patent and Trademark Office (USPTO), Maria Pallante and Steve Tepp of the U.S. Copyright Office, Nancy Weiss of the Institute of Museum and Library Services, and Deborah Lashley-Johnson, IP Attach at the U.S. Mission to the UN.

SCCR to Expedite Work in Favor of Reading Impaired

¶4. In continuation of its discussions at the 17th session, discussions at the 18th session of the SCCR meeting centered on a series of practical measures to facilitate access to copyright-protected materials by reading impaired persons, a key aim of which is to develop solutions to make published works available in accessible formats in a reasonable time frame. All participants supported moving forward with this work. Specifically, the blind community has acknowledged in meetings with the U.S. that cooperative arrangements with publishers are needed, and fully support the work of the stakeholders' platform that will focus on contractual, technological and other arrangements among rightholders, charitable organizations and the blind community. Some representatives of this community, however, also maintain that a binding international instrument that would exempt some users from liability may be necessary to facilitate the movement of certain copyrighted works across borders. Per the mandate prescribed by the SCCR meeting of the 17th session, the meeting of the 18th session was to focus on a discussion of national experiences and

existing national laws to address the issue. Thus, the United States came to SCCR 18 prepared to lead by example.

U.S. Consultation Process

¶15. The U.S. intervention centered on its domestic consultations with American (and some foreign) stakeholders, noting both its open-ended and transparent nature and providing a few preliminary observations on lessons learned. From the outset of discussions on exceptions for VIP in the SCCR, the United States noted the premise that issues affecting accessibility for VIP persons are fundamentally important.

The United States underscored its view that national consultations are a critical first step in any further work on this issue within the SCCR, and that deliberations regarding any specific instrument (whether binding or nonbinding) would be premature because we are still immersed in fact-finding and evaluation. We also have been made aware that few countries and regions are actively engaged with their stakeholders at the domestic level.

¶16. Against this background, the USDEL decided to deliver a relatively long intervention describing the U.S. consultation process and preliminary observations early in the Committee's deliberations on exceptions and limitations in order to set the tone for the overall discussion. The intervention included a detailed summary of the many questions the United States has raised with stakeholders in published, public inquiries, a summary of some initial points of common focus derived from public comments, and a summary of some of the nuanced issues (legal, technical and business) discussed by multiple stakeholders during a day-long public meeting. Our principal message was that the United States is constructively engaged with its stakeholders with a view toward finding timely, effective, and practical solutions to enhance accessibility of copyrighted works for the benefit of VIP (taking

into account complex, inter-related issues of law, business, technology, and resources) and that those conversations will continue in the United States. The U.S. noted that national consultations are important to find timely, efficient, and practical improvements in the availability of accessible copyrighted works. Specifically, the United States believes that the Committee should actively pursue a strategy of "guided development" to identify whether there are specific problems and, if so, to act on possible solutions for improving access to copyrighted works for the benefit of blind and disabled persons. Once the Committee has developed a deeper understanding of the underlying problems in national law and the international framework, if any, the SCCR has many tools to determine whether and how to address such problems. The United States is aware that, outside of the Group B Members, a significant number of Member countries (including some proponents of the aforementioned treaty proposal) lack even a basic exception for VIP in their national copyright laws.

¶17. With respect to U.S. Copyright Law, over a decade ago, the United States enacted amendments to our copyright law to establish a limitation on exclusive rights for the benefit of the blind or other persons with disabilities. That provision was amended five years ago in an effort to improve access to educational materials. In broad outline, under Section 121 of the U.S. Copyright Act, certain authorized organizations may make copies (or phonorecords) of previously published, non-dramatic literary works and certain instructional materials in specialized formats (braille, audio, or digital text) for the exclusive use of blind or other persons with disabilities without permission from the rightsholders.

¶18. By all accounts, the U.S. intervention (which also was made promptly available to delegations) was very well received. Group B incorporated the importance of national consultations into its statement on this agenda item. In addition, delegates from Germany, France, Japan, and Australia personally thanked the USDEL for its hard work on this issue, noting that similar domestic consultations were needed in their countries. In the plenary, SCCR Chairman Jukka Liedes (Finland) also noted that the US had done its homework for this meeting. Liedes also noted that national consultations were underway in some countries in his conclusions for the meeting. Even the delegate from Ecuador, a co-sponsor of the WBU treaty proposal that is discussed more fully below, expressed its appreciation to the USDEL for the positive U.S. statement.

WBU Proposal Tabled by Brazil

¶9. On the fourth day of the session, the delegations of Brazil, Ecuador, and Paraguay formally tabled a treaty proposal based on the proposal of the World Blind Union (WBU) that has been circulating informally for many months. With little surprise, the proposal attracted ready support from developing and least developed countries, including statements made by the African group, GRULAC, and the Asian group and a number of delegations in these groups. Apparently concerned that the VIP treaty proposal could eclipse the full range of exceptions and limitations before the SCCR, some of these delegations stated that the Committee should work on exceptions and limitations within a "global and inclusive framework." Russia and China also supported the treaty proposal.

¶10. In response, Group B, the EU, and the Central European and Baltic States received the proposal with interest as well as appropriate caution, and confirmed that they would take it home for further study. Japan, Australia, Korea, Greece, the United States and a number of other member delegations also individually thanked the proponents of the proposal, with some noting that actual deliberations on the proposal at this time would be premature because Member States are still immersed in fact-finding and evaluation, and that, given the diversity and complexity of the issues affecting accessibility for VIP, further study is needed. The full range of views on the treaty proposal is reflected in the Chair's conclusions with reasonable accuracy. Group B did not object to discussing (as opposed to deliberating on) the treaty proposal at the 19th session, along with other potential solutions. The SCCR decided to continue discussions on the treaty and other proposals and contributions put forth by the Members at the 19th session, to give member states time to reflect on the best way to move forward.

¶11. Unfortunately, certain activist NGOs (with Knowledge Ecology International perhaps taking the lead) were quick to take to the Internet with their spin on the meeting, and mischaracterized the actual positions taken by the US, the EU, Canada, and other delegations. One particularly aggressive blog headline in 'The Huffington Post,' for example, noted that "Obama Joins Group to Block Treaty for Blind and Reading Disabilities." To clarify the actual position of the US at the meeting, U.S. Mission in Geneva with the assistance of the USPTO and the Copyright Office prepared talking points for State and worked with the Disabilities Policy Office in the White House to prepare a press statement on the

issue.

Exceptions and Limitations Questionnaire

¶12. There was a lengthy discussion in plenary on a proposed 52-question questionnaire on exceptions and limitations prepared by the Secretariat for responses by SCCR member states to inform the Committee's future work in this area. Chile (supported by a number of developing countries) intervened to expand the questionnaire to include additional topics, noting that a similar APEC questionnaire included more than 100 questions. Brazil proposed introducing questions that would require "analytic" answers, such as "Are exceptions and limitations sufficient in light of their underlying public policies?" In response, the USDEL expressed a strong preference for an approach that was at once "concise" (not much more than 52 questions) but also allowed for "precise" responses (that is, giving member states with complex statutory provisions and case law the latitude to provide more information if needed to respond to the question). Group B countries generally supported the "concise-precise" approach. However, splitting the difference, Chairman Liederer noted in his conclusions for the meeting that the questionnaire will be expanded to include certain other topics, while Member States also will be allowed to submit additional information.

Stakeholder Platform

¶13. For a number of months, WIPO Director General Francis Gurry and the WIPO Secretariat have conducted informal consultations among the principal VIP stakeholders (including blindness groups, publishers and other copyright owners, and NGOs) with a view toward identifying and facilitating practical solutions (such as encouraging the

adoption of standardized accessible formats or building "trusted intermediary" relationships between VIP charities and publishers to encourage the production and secure distribution of content in accessible formats. The Secretariat delivered an Interim Report on these discussions. Gurry made clear at the opening plenary session that a stakeholders platform was not a substitute for an "enabling legal framework." At the same time, he noted that it is not the role of the Secretariat or the DG to propose or oppose a treaty, which is a decision of Member States. At SCCR 17, the U.S. supported the stakeholder platform in principle and at SCCR 18, the U.S. reaffirmed its support of the process after reviewing and listening to the Interim Report.

¶14. Egypt and a number of developing countries requested that the Secretariat "ensure" the effective participation of developing and least-developed countries in the stakeholder platform by making funding available for such participation. These countries also called for a stakeholder platform meeting to be held in a developing country. The Chairman's summary requires the Secretariat to use "best efforts" to organize a platform meeting in a developing country.

Protection of Audiovisual Performances

¶15. There was wide support within the SCCR for continuing to work on an audiovisual performance treaty (AV Treaty) although no delegation was able to articulate a way forward. The U.S. reaffirmed its commitment to the protection of audiovisual performers in their performances. However, the USDEL also stated that it was unaware of any narrowing of the wide differences on the issue of the transfer of exclusive rights from performers to producers, which resulted in the failure of the 2000 Diplomatic Conference on an AV Treaty. The Chair's conclusions simply state that the Committee reaffirmed its commitment to work on the AV Treaty. The Chair also stated that the Secretariat would prepare a background paper on the main outstanding issues and would organize informal, open-ended consultations in Geneva on possible solutions to the current deadlock.

Protection of Broadcasting Organizations

¶16. In advance of SCCR 18, the Secretariat organized an information session on recent developments in the broadcasting sector, including information on recent legal, business, and technological developments. A number of speakers addressed the issue of signal theft. The United States restated its longstanding support for updating the 1961 Rome Convention for the protection of broadcasting organizations, while also restating its view that the prospect of successfully concluding such a treaty is remote because of the wide differences among the delegations on fundamental issues related to a possible new instrument. The USDEL carefully worded its intervention to avoid signaling any change in the direction of the U.S. position on the treaty (either forward or backward movement). The Chairman's conclusions note that the Committee invited the Secretariat to continue organizing regional and national seminars on the draft treaty.

Documents

¶17. Documents relating to the 18th SCCR meeting, including a Chairman's summary, are available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=17458.

¶18. Documents relating to the formal component of the United States consultation process with respect to accessibility for VIP are available at <http://www.copyright.gov/docs/sccr/>

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